

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

GEORGE J. BURNS,)	
)	
Plaintiff,)	
vs.)	NO. CIV-04-1347-T
)	
CORRECTIONS CORPORATION OF)	
AMERICA, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff, an Arizona state prisoner appearing *pro se*, brought this action pursuant to 42 U.S.C. §1983. In accordance with 28 U.S.C. §636(b)(1)(B), the matter was referred to United States Magistrate Judge Doyle W. Argo for initial proceedings. The defendants filed a motion to dismiss, to which plaintiff responded. The magistrate judge determined that, because the motion and response thereto referenced materials outside the pleadings, the motion should be treated as a motion for summary judgment pursuant to Fed. R. Civ. P. 56. Accordingly, he notified the parties of this determination, and each submitted additional briefs or materials for consideration.


On October 19, 2005 the magistrate judge filed a Report and Recommendation [Doc. No. 41] in which he determined that plaintiff had failed to exhaust his administrative remedies prior to filing this action. The magistrate judge further recommended that the complaint be dismissed without prejudice to its refiling after exhaustion of the administrative remedies. Because of the recommended disposition of this case, he also recommended that plaintiff's motion for appointment of counsel [Doc. No. 35] be denied.

The Report and Recommendation also advised plaintiff of his right to object to same, set

a deadline of November 8, 2005 for filing objections, and cautioned plaintiff that a failure to timely file objections would result in a waiver of his right to appellate review of the matters determined in the Report and Recommendation. That deadline has expired, and plaintiff has not filed an objection or sought an extension of time in which to do so.

Accordingly, the Report and Recommendation [Doc. No. 41] is adopted as though fully set forth herein. This action is dismissed without prejudice to the filing of a new action after plaintiff has fully exhausted the administrative remedies available to him. Plaintiff's motion for appointment of counsel [Doc. No. 35] is denied.

IT IS SO ORDERED this 16th day of November, 2005.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE